

## **VIRGINIA BOARD OF MEDICINE MINUTES**

June 26, 2008

Department of Health Professions

Richmond, VA

### **PUBLIC HEARINGS**

Mr. Heretick called the public meeting to order at 8:33 a.m. and announced that comments would be taken on the following proposed regulations: 1) 18VAC85-20 – Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic; 2) 18VAC85-101– Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologist-Limited, and 3) 18VAC85-120 – Regulations Governing the Licensure of Athletic Trainers.

There were no comments. Ms. Yeatts advised that a letter from the Medical Society of Virginia supporting the proposed changes to 18VAC85-20 was included in the agenda packet.

Mr. Heretick stated that written comments should be forwarded to Dr. Harp or posted on the Virginia Regulatory Townhall. Mr. Heretick also stated that the comment period closes July 9, 2008 and if there are not more than 10 objections to the amendments, these regulations will be come effective July 24, 2009.

The public hearing on regulations was concluded at 8:35 a.m.

### **CALL TO ORDER:**

The meeting of the Board convened at 8:35 a.m.

### **MEMBERS PRESENT:**

Stephen Heretick, JD, President  
Gen. Clara Adams-Ender, RN, MSN, USA Retired  
Ann T. Burks, JD  
Malcolm Cothran, MD  
Claudette Dalton, MD  
William Epstein, MD (*arrived at 8:40*)  
Suzanne Everhart, DO  
Valerie Hoffman, DC  
Roderick Mathews, JD  
Juan Montero, MD (*arrived at 8:40*)  
Robert Mosby, MD, Vice-President  
Gopinath Jadhav, MD  
Jane Piness, MD, Secretary-Treasurer  
Karen Ransone, MD

### **MEMBERS ABSENT:**

Sandra Anderson Bell, MD  
Patrick Clougherty, MD  
Ellen Shapiro, DPM

### **STAFF PRESENT:**

William L. Harp, MD, Executive Director

Jennifer Deschenes, JD, Deputy Executive Director, Discipline  
Barbara Matusiak, MD, Medical Review Coordinator  
Ola Powers, Deputy Executive Director, Licensing  
Colanthia Morton Opher, Operations Manager  
Amy Marschean, Assistant Attorney General  
Sandra Ryals, Director, Department of Health Professions  
Emily Wingfield, Deputy Director, Department of Health Professions  
Elaine Yeatts, DHP Senior Policy Analyst

**OTHERS PRESENT:**

Michael Jurgensen, Medical Society of Virginia  
Tyler Cox, Medical Society of Virginia  
Michele Satterlund, VCNP

**EMERGENCY EVAUCATION PROCEDURES**

After roll call a quorum could not be declared so the Board proceeded with non-voting business. The emergency evacuation procedures were read by Dr. Mosby. During the reading, additional board members arrived and a quorum was declared.

Mr. Heretick then acknowledged departing board members, Dr. Everhart and Dr. Clougherty, and that advised that plaques expressing the Board's gratitude for their service to the Commonwealth would be forwarded accordingly.

Mr. Heretick then presented Kate Nosbisch with a plaque expressing the Board's gratitude for the work she had done for the Board from April 2000 until April 2008. Ms. Nosbisch received a standing ovation.

Dr. Harp stated that during Ms. Nosbisch's tenure she accomplished what no other medical board in the nation has done to date and that was to have the Board put on the training curriculum for interns/residents. Dr. Harp then presented Ms. Nosbisch with a replica of the Administrators in Medicine plaque and a personal token of appreciation to recognize her work with the Practitioner's Information Group. Dr. Harp also presented Angela Joyner, Alesia Harris, Teresa Long-Matthews, and Kasuni Burwell with a personal token recognizing their dedication and commitment as the support behind Ms. Nosbisch.

Ms. Nosbisch addressed the Board and stated that she was grateful to have had a great staff, had the support of Robert Nebiker, past agency director, and Dr. Harp during her eight years, and remarked it was the best job she has ever had. Ms. Nosbisch informed the Board that she had accepted a position as an Executive Director with the Department of Professional and Occupational Regulations, but will miss DHP.

**APPROVAL OF THE FEBRUARY 21, 2008**

Dr. Piness moved to approve the minutes of February 21, 2008. The motion was seconded and carried unanimously.

## **ADOPTION OF AGENDA**

Dr. Ransone moved to adopt the agenda as amended by Elaine Yeatts. The motion was seconded and carried unanimously.

## **PUBLIC COMMENT ON AGENDA ITEMS**

There was no public comment.

## **PRESIDENT'S REPORT**

Mr. Heretick reported that for the next several months the Board will be confronted with a significant number of disciplinary hearings and that he has requested board staff to generate a list of dates, from now until October, for members to sign up and commit to. Mr. Heretick encouraged the Board to be mindful of their obligation and expected cooperation.

## **VICE-PRESIDENT'S REPORT**

There was no report.

## **SECRETARY-TREASURER REPORT**

There was no report.

## **EXECUTIVE DIRECTORS REPORT**

### Farewell to Kate Nosbisch

Dr. Harp thanked the Board for taking the time to honor Ms. Nosbisch and her achievements during her tenure.

### Board Members Terms Expiring

Dr. Harp identified those board members with terms expiring June 30, 2008. Dr. Harp also stated that it is tradition for those members to continue serving until re-appointment or an appointment has been made by the Secretary's office. To date, none of the identified members have been contacted regarding re-appointment.

### Revenue and Expenditures

Dr. Harp advised that the Board was well within budget.

### American Chiropractic Association – Expansion of Authority within Medicare Program

Dr. Harp referred to the letter from Glenn Manceaux, DC, and President of the American Chiropractic Association and advised that for now it was being provided for information purposes only, however; the Board may want to address this issue in the future.

FSMB Prescribing Books

Dr. Harp confirmed that the mailing project of the Federation of State Medical Board's prescribing guidebook had been completed and every member should be in receipt of theirs.

Request for Prescribing Sedative and Psychoactive Drugs in the Elderly

Dr. Harp informed the Board that Ms. Ryals had received an email from a practitioner, who after receiving FSMB's book, prompted an inquiry about the availability of information on prescribing sedatives and psychoactive drugs in the elderly. Dr. Harp stated that the Board could accept this as a petition for rulemaking or as a FYI. The Board unanimously agreed that this be accepted as a FYI only.

Ad Hoc on Mixing, Diluting, Reconstituting

Dr. Harp stated that in light of the latest revisions to the USP 797, the Ad Hoc Committee on Pain Management will be re-comprised and the current regulations on mixing, diluting and reconstituting reviewed for possible amendments. Dr. Harp advised that Dr. Cothran has agreed to head up this effort.

Board Retreat/Workshop

Dr. Harp commented that a retreat/workshop is a valuable tool for the Board and suggested that consideration be given to holding such a gathering in conjunction with the DHP orientation that will be offered to new board members in October 2008.

FSMB Editorial Committee

Dr. Harp advised that FSMB is searching for individuals to serve on their editorial committee. Anyone interested should contact Pat McCarthy at FSMB.

**COMMITTEE AND ADVISORY BOARD REPORTS**

Dr. Cothran moved to accept the Committee and Advisory Board report en bloc. The motion was seconded and carried unanimously.

**OTHER REPORTS**

Assistant Attorney General

Ms. Marschean advised that on May 2, 2008 the Virginia Supreme Court denied Dr. Vuyyuru's petition.

Director of DHP – Sandra Ryals

Ms. Ryals gave an update on DHP's and the Board's performance measures and advised that she will follow up with a more detailed report in the future. Ms. Ryals informed the Board the Virginia was one of three states to receive an A- rating, and stated that it was much to credit of the gubernatorial appointees. Ms. Ryals also gave a quick update on the work in progress on the healthcare reform system.

Board of Health Professions

There was no report.

Department of Health Professions

There was no report.

Podiatry Report

There was no report.

Chiropractic Report

There was no report, however; Dr. Hoffman advised that she attended the annual convention and suggested that some of the speakers be invited to address the Board in the future.

**NEW BUSINESS**

Request for Review of Radiology Assistants

Ms. Yeatts advised that the letter from Senator Ryan McDougal was being provided for information only. Ms. Yeatts reminded the Board of an earlier presentation from a MCV group the scope of practice of this profession. After the presentation, the Board concluded that it appeared the several procedures being by radiology assistants were the practice of medicine and that they did not fit the fit under the scope of a radiology technologist.

Ms. Yeatts concluded that at the 2008 General Assembly, the question of whether a study had been performed by DHP had been raised. Ms. Yeatts advised that it is not our intent to sponsor legislation and suggested that she and appropriate board staff prepare a report for Senator McDougal that outlines what the Board knows about this profession and their scope of practice.

**Regulatory Items**

Status of Regulations

Ms. Yeatts provided an updated handout of the status report for informational purposes that did not require any action. Ms. Yeatts pointed out that the three fast-track action items will go into effect July 24, 2008 assuming there are no objections.

**Periodic review of Chapter 20: Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic**

Ms. Yeatts advised that periodic review of Chapter 20 was last conducted in 2004 but has been amended numerous since then.

Dr. Mosby moved to begin the periodic review of Chapter 20 with publication of a Notice of Periodic Review. The motion was seconded and carried unanimously.

**Adoption of exempt regulations for restricted volunteer registration**

Ms. Yeatts advised that the primary gist of the changes would allow a practitioner the ability to practice up to three days without a Virginia license provided the entity verifies that the practitioner holds a current license in another state. The proposed amendment would bring the regulations in line with the law.

Dr. Mosby moved to adopt the final amendments as an exempt action for consistency with change to the Code in the following sections: Sections 18VAC85-20-225, 18VAC85-40-55, 18VAC85-50-59, 18VAC85-80-65, 18VAC85-101-145, 18VAC85-110-145, and 18VAC85-120-85. The motion was seconded and carried unanimously.

**Fast-track action – periodic review of nurse practitioner regulations**

Ms. Yeatts informed the Board that Dr. Bell represented the Board of Medicine on the Forms Review Subcommittee with the Board of Nursing. Ms. Yeatts advised that the Board of Nursing considered the two comments received and their recommendation is noted on pages 79-94 in the agenda packet. Ms. Yeatts stated that the changes were for primarily for clarification purposes.

Dr. Montero moved to accept the Review Committee's recommended changes for a fast-track action to clarify certain sections of the regulations; allow additional pathways for reinstatement, accept ACCME-accredited courses for continuing educations; add rules for prescribing for self or family, and change the requirement for chart reviews from monthly to regular for prescriptive authority. The motion was seconded and carried unanimously.

**Response to petition for rulemaking – nurse practitioner regulations**

Ms. Yeatts informed the Board of the petition's background and advised that the Committee of the Joint Boards of Nursing and Medicine voted to recommend that the petition be denied.

After brief discussion, Dr. Mosby moved to accept the Committee's recommendation to reject the petition based on the fact that the Board does not have the statutory authority to respond affirmatively to the request. The motion was seconded and carried unanimously.

**Recommendation on proposed action – bachelor's degree for chiropractic licensure**

Ms. Yeatts reminded the Board that at the January 25, 2008 Legislative Committee meeting the recommendation was to withdraw the NOIRA. However, when this issue came before the Full Board, February 21, 2008, the Board moved to amend regulations to require a bachelor's degree for licensure in this profession. Ms. Yeatts then advised that the Department of Planning and Budget (DPB) reviewed the proposal and she, Dr. Hoffman and Dr. Harp were given the opportunity to address some of their concerns. In the end, DPB did not recommend approval of the proposal because there was no evidence present to support lack of patient safety with current educational requirements. Ms. Yeatts advised that the Board has been asked to consider withdrawal of the NOIRA.

After a brief discussion, Mr. Mathews moved to withdraw the NOIRA. The motion was seconded. Discussion was then open and the Board voiced several concerns including the lack of an opportunity to submit additional information to DPB for reconsideration. After discussion, the vote held was 7 to re-post the NOIRA on Townhall and 6 to withdraw.

The floor opened again for discussion after which Dr. Cothran moved to re-post the NOIRA. The motion was seconded.

Ms. Wingfield, Ms. Yeatts, and Ms. Marschean offered some clarity and options that the Board may want to consider in order to address the issue and move forward. Ms. Ryals also acknowledge the Board's frustration on the matter but encouraged that they are other opportunities to re-address this issue in the future.

General Adams-Ender moved to reconsider the original vote based on Ms. Ryals comments. The motion was seconded. The motion to reconsider was carried 8 in favor, 5 opposed.

Dr. Montero moved for a recount on the original motion to withdraw the NOIRA. Mr. Mathews called the question. The motion to withdraw the NOIRA was then passed - 8 in favor, 1 opposed, and 4 abstentions.

#### **Recommendation on amendments to proposed action on pain management regulations**

Ms. Yeatts advised the DPB did not recommend approval of the proposed pain management regulations citing the concerns about mandating urine drug screens and cost factors associated with them.

Ms. Burks moved to accept the proposed pain management regulations as previously submitted to delete (f) subsection C1 and amend C3 on informed consent and treatment plan. The motion was seconded and carried unanimously.

Ms. Yeatts also asked the Board to entertain the amendments to the agenda to include these same regulation amendments to the practice regulations for Physician Assistants and Nurse Practitioners.

Ms. Burks moved to accept. The motion was seconded and carried unanimously.

#### **Request from Virginia Department of Health (VDH) to consider expedited family planning approach**

Ms. Yeatts provided a brief background on this issue and Dr. Burns addressed the Board to offer additional information regarding the favorable recommendation of the Board of Pharmacy.

Dr. Ransone moved to accept the proposal for expedited family planning approach. The motion was seconded and carried unanimously.



### Practitioner Information Report

Dr. Harp advised that the report was for information purposes only and did not require a vote. Dr. Harp informed the Board that the call center, previously managed by Ms. Nosbisch now fell under the auspices of DHP's data department, and that these individuals would continue to field calls regarding the profile but would seek the Board's guidance on policy issues.

### Discipline Report and Statistics

Ms. Deschenes gave a verbal update on the Board of Medicine's case status. Ms. Deschenes informed the Board of the difficulty her staff is experiencing in filling several hearing dates.

Ms. Deschenes restated Mr. Heretick's request regarding the need for Board members to avail themselves as much as possible to combat the rising disciplinary cases.

### Request of Advisory Board on Respiratory Care to Board of Health Professions

Dr. Harp informed the Board that the issue of poloysonographers was discussed at the Respiratory Care Advisory Board meeting February 5, 2008 and all involved agreed to work with this profession to have their scope of practice within legal requirements in the Commonwealth. He further advised that the Board of Health Professions meet in April and referred the matter back to the Advisory Board for further supporting documentation.

Dr. Hoffman moved that Dr. Harp and Brian Wilson, Chair, Advisory Board on Respiratory Care, with input from VSRC, author a letter to BHP asking them to begin a study of the affects and scope of practice of poloysonographers. The motion was seconded and carried unanimously.

### Nominating Committee Report

Dr. Ransone announced that the slate of officers being presented for consideration is as follows: Stephen Heretick, JD, President, Jane Piness, MD, Vice-President, and Valerie Hoffman, DC, Secretary/Treasurer.

Dr. Montero moved that the nominations be closed. The motion was seconded and carried.

Dr. Montero moved that the nominations be accepted as presented. The motion was seconded and carried unanimously.

### 2009 Standing Meeting Calendar

The Board unanimously agreed to accept the 2009 Standing meeting calendar as presented.

## **ANNOUNCEMENTS**

General Adams-Ender announced that she would be attending FSMB Summit, July 7-8, 2008 in Baltimore, MD.



Dr. Harp thanked the General for her dedication and willingness to attend these conferences as a representative of the Board.

There were no additional announcements.

**NEXT SCHEDULED MEETING:** October 23, 2008

**ADJOURNMENT:** With no further business to conduct, the meeting adjourned at 11:30 a.m.

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Stephen E. Heretick, J.D.  
President

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William L. Harp, M.D.  
Executive Director

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Colanthia Morton Opher  
Operations Manager